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IN THE

Supreme Court of the United States

LINDA LINGLE, Governor of the State of Hawaii, and MARK J. BENNETT, Attorney General of the State of Hawaii,

Petitioners,

v.

CHEVRON USA, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF THE STATES OF NEW YORK, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, ILLINOIS, IOWA, KENTUCKY, MAINE, MARYLAND, MINNESOTA, MISSISSIPPI, MISSOURI, MONTANA, OKLAHOMA, OREGON, UTAH, VERMONT, WASHINGTON, THE COMMONWEALTH OF PUERTO RICO, AND THE TERRITORIES OF GUAM AND THE VIRGIN ISLANDS AS AMICI CURIAE IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

1. Whether the Just Compensation Clause authorizes a court to invalidate state economic legislation on its face and enjoin enforcement of the law on the basis that the legislation does not substantially advance a legitimate state interest, without regard to whether the challenged law diminishes the economic value or usefulness of any property.

2. Whether a court, in determining under the Just Compensation Clause whether state economic legislation substantially advances a legitimate state interest, should apply a deferential standard of review equivalent to that traditionally applied to economic legislation under the Due Process and Equal Protection Clauses, or may instead substitute its judgment for that of the legislature by determining *de novo,* by a preponderance of the evidence at trial, whether the legislation will be effective in achieving its goals.

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INTEREST OF THE *AMICI CURIAE*

This case presents two critical and related constitutional questions: (1) whether courts can use the Takings Clause to invalidate generally-applicable legislation that does not "substantially advance" a legitimate governmental interest; and (2) if so, whether they must conduct a *de novo* review of the statute's substantive validity to determine if it will in fact accomplish the government's stated purpose. The Ninth Circuit answered yes to both of these questions. If allowed to stand, its decision will authorize courts to substitute their own policy judgments for a legislature's, and in doing so, upset the careful balance of power that our federal system strikes between democratically-elected state and local institutions and the judiciary.

The *amici* States, Commonwealth, and Territories through their legislative and executive branches, routinely engage in many forms of regulation that affect economic interests. The challenges posed by new patterns of growth and development, a rapidly-changing economy, advances in science and technology, and increased understanding of public health risks and environmental harms require the states to respond and, on occasion, to experiment. The Ninth Circuit's ruling permits an assault on this prerogative by encouraging challenges under the Takings Clause that are premised on the so-called "means-ends" test mentioned in *Agins v. City of Tiburon*, 447 U.S. 255, 260 (1980). But as this Court has recently indicated, it is far from clear whether legislation should even be subject to such a test under the Takings Clause.

The Ninth Circuit, however, not only adopted such a test but made it an exceedingly stringent one. Its decision requires a court to enjoin the operation of economic legislation under the Takings Clause if the court, after conducting a *de novo* review of the statute, concludes that the challenged law will not accomplish the legislature's intended goal. Left unaddressed, the Ninth Circuit's decision will severely constrain the options for a Legislature grappling with urgent and competing policy concerns. Courts will be required to closely scrutinize not the reasonableness of a regulation, but whether the legislative "means" chosen by the elected members of state government will, in the court's own view, achieve their "ends."

The ability of the states to enact not just land use and price control legislation, but also a potentially vast array of regulatory measures, including legislation regulating economic, environmental, health, or technological matters, will be irremediably compromised. The Ninth Circuit's decision threatens to establish the federal courts as overseers of state laws, routinely inquiring whether the state has made the "correct" policy choice to respond to a particular problem. This scheme would represent a sharp departure from the distribution of authority in our federal system and should be promptly addressed by this Court.

SUMMARY OF THE ARGUMENT

A grant of certiorari is warranted to review the Ninth Circuit's decision for several reasons. First, its determination that the Takings Clause subjects economic legislation to *de novo* judicial review for effectiveness conflicts with the decisions of other federal appellate courts and state high courts. Several of these courts have held that the Takings

Clause imposes no such requirement at all, concluding instead that such review of legislative judgments arises solely under the Due Process Clause. Other courts have held that the Takings Clause permits such review, but that it is deferential, requiring only that the legislation be rationally related to a legislature's purpose. This Court should grant the petition to resolve these conflicts.

Second, the Ninth Circuit's decision departs from this Court's own rulings. In *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998), and *City of Monterey v. Del Monte Dunes, Ltd.*, 526 U.S. 687 (1999), a majority of this Court suggested that state legislation is not subject to any "means-ends" scrutiny under the Takings Clause. The Court has also made clear that if such scrutiny is authorized at all, the heightened review used by the Ninth Circuit is inappropriate when considering generally-applicable state legislation under the Takings Clause. In *Del Monte Dunes*, the Court indicated that "intermediate" scrutiny under the Takings Clause may be used only when reviewing an "exaction" — not a generally-applicable regulation, but a land-use decision conditioning approval of development on the dedication of property to public use. The Ninth Circuit's imposition of demanding *de novo* review also conflicts with this Court's ruling in *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470 (1987), which establishes that any substantive review that the Takings Clause may authorize is deferential.

Third, this case presents an issue of fundamental public importance that several courts have urged this Court to address. The Ninth Circuit's decision jeopardizes the ability of States to craft regulatory measures to meet the changing needs of their citizens. If left intact, it threatens a wide array of public protections, by means of the type of intrusive judicial review epitomized by *Lochner* and long ago discredited.

REASONS FOR GRANTING THE PETITION

I. THE COURT SHOULD GRANT CERTIORARI TO RESOLVE A CONFLICT AMONG THE LOWER COURTS AS TO WHETHER THE TAKINGS CLAUSE PERMITS JUDICIAL REVIEW OF THE SUBSTANTIVE VALIDITY OF ECONOMIC LEGISLATION AND HOW DEFERENTIAL ANY SUCH REVIEW MUST BE.

The decision below rests on two controversial constitutional premises: that the Takings Clause permits judicial review of the effectiveness of generally applicable-legislation, and that such review is not deferential, but rather a *de novo* scrutiny of whether, in the court's view, a statute will in fact achieve the Legislature's purpose. On both these points, the Ninth Circuit's decision conflicts with decisions of federal appellate courts and state high courts. Accordingly, a grant of certiorari by this Court is appropriate.

A. The Lower Courts Are in Conflict About Whether the Takings Clause Requires Judicial Review of the Substantive Validity of Generally-Applicable Legislation.

The Ninth Circuit's decision authorizing challenges to the substantive validity of generally-applicable state legislation under the Takings Clause conflicts with the rulings of three federal circuit courts and the highest courts of four states. The Takings Clause states that private property not "be taken for public use, without just compensation." In the view of the court below, this provision somehow requires the invalidation of all government action if it does not "substantially advance a legitimate state interest."

Chevron USA, Inc. v. Cayetano, 224 F.3d 1030, 1034 (9th Cir. 2000) (quoting *Agins*). This inquiry, according to the Ninth Circuit, mandates an intrusive "means/ends" review of policy judgments that have traditionally been reserved to democratically-elected institutions.

Other federal courts of appeals, recognizing that the Takings Clause by its terms imposes no such requirement, but rather only guarantees "just compensation" for a government taking, have reached a contrary conclusion. The Fifth Circuit has explained that challenges alleging that government interference with property interests is impermissibly "illegitimate and arbitrary" arise under the Due Process Clause, not the Takings Clause. *Simi Investment Co. v. Harris County*, 256 F.3d 323, 323 & n.3 (5th Cir.) (on petition for rehearing *en banc*) (citing *Eastern Enterprises v. Apfel*, 524 U.S. 498 (1998)), *cert. denied,* 534 U.S. 1022 (2001). Similarly, the Federal Circuit has held that "in a takings case we decide only whether the governmental action in question constituted a taking for which compensation must be paid." *Rith Energy, Inc. v. United States*, 270 F.3d 1347, 1352 (Fed. Cir. 2001) (refusing to consider the appellant's claim that the government's refusal to revise coal-mining permit because it was "driven by political pressure"). As to questions of legitimacy or efficacy, the Federal Circuit said, "we assume that the government action was lawful." *Id*; *see also Restigouche, Inc. v. Town of* Jupiter, 59 F.3d 1208, 1211 n.1 (11th Cir. 1995) ("We do not recognize ["substantially advance" takings claims] as distinct, viable federal constitutional claims in the zoning context."); *Bamber v. United States*, 45 Fed. Cl. 162, 166 (1999) (a claim that a government action fails substantially to advance a legitimate state interest "is not a takings claim").

The decision below also conflicts directly with the decisions of the high courts of four states, all of which have stressed that substantive challenges to the reasonableness of legislation do not lie under the Takings Clause. The New Jersey Supreme Court recently dismissed a takings claim — even though it found that the ordinance in question was "arbitrary, capricious and unreasonable" as applied to the plaintiff's property — on the ground that "[t]he Takings Clause 'is designed not to limit the governmental interference with property rights per se but rather to secure compensation in the event of otherwise proper interference amounting to a taking.'" *Pheasant Bridge Corp. v. Township of Warren*, 777 A.2d 334, 343 & n.1 (N.J. 2001), *cert. denied*, 535 U.S. 1077 (2002) (quoting *Eastern Enterprises*, 424 U.S. at 545). An invalid ordinance, the court said, does not present the "otherwise proper [governmental] interference that the Takings Clause presupposes." *Id.* at 343 (internal quotation omitted). Likewise, the Florida Supreme Court has emphasized the distinction between judicial invalidation of arbitrary government action, which arises under the Due Process Clause, and a judicial determination that a government action takes property without just compensation. *Tampa-Hillsborough County Expressway Authority v. A.G.W.S. Corp.*, 640 So.2d 54, 57 (Fla. 1994). Decisions from the Rhode Island and Washington Supreme Courts are to the same effect. *See Brunelle v. Town of South Kingston*, 700 A.2d 1075, 1083 n.5 (R.I. 1997) (rejecting conclusion that regulation may effect taking if it did not substantially advance legitimate state interest because "the arbitrariness or capriciousness of a particular state action is properly examined under the light of the Fourteenth Amendment due process clause and not the Fifth Amendment takings clause"); *Mission Springs, Inc. v. City of Spokane*, 954 P.2d 250, 261 (Wash. 1998) (claim of "[a]rbitrary or irrational refusal or

interference with processing a land use permit" properly analyzed under Due Process, not Takings Clause).

On the other hand, two other state high courts have joined the Ninth Circuit in using the Takings Clause to inquire whether a regulation "substantially advances" the government's objectives, thereby deepening the split on this important issue. *See State ex rel. Shemo v. City of Mayfield Heights*, 765 N.E.2d 345 (Ohio 2002) (finding zoning ordinances invalid as applied because they failed "to substantially advance" a legitimate interest, and concluding that ordinances therefore effected a compensable taking); *Sheffield Development Co., Inc. v. City of Glenn Heights*, __ S.W.3d __, 2004 Tex. LEXIS 195 (Tex. 2004) (applying *Agins* test of whether regulation "substantially advances legitimate state interests" to Texas Constitution's Takings Clause).

B. To the Extent the Takings Clause Authorizes Any Substantive Judicial Scrutiny of Economic Legislation, The Lower Courts Are Also In Conflict As To Proper Standard of Review.

The lower courts are just as sharply divided over the proper standard of review under the Takings Clause as they are about whether any scrutiny at all is appropriate. The Ninth Circuit held that the Takings Clause requires a searching *de novo* review of a challenged statute to determine whether or not it will in fact achieve the state's objectives — a standard, according to the Ninth Circuit, that is more rigorous than the traditional rationality review authorized by the Due Process Clause. This standard substantially diverges from the deferential standard adopted by the First Circuit and the highest courts of California and New York. This Court should

grant certiorari to confirm that if any substantive review of legislation is authorized by the Takings Clause, only the most deferential scrutiny is appropriate.

In reviewing the validity of a zoning regulation, the First Circuit concluded that the difference between a substantive due process claim and a takings claim was "largely a matter of semantics." *South County Sand & Gravel Co., Inc. v. Town of South Kingston*, 160 F.3d 834 (1st Cir. 1998). Under either provision, the court held, "[t]he dispositive question is whether the challenged legislation bears a rational connection to a legitimate public purpose." Any higher standard would "as[k] us to debate the effectiveness of municipal policy — and that is well outside our compass." *Id.* at 839; *see also Greenspring Racquet Club, Inc. v. Baltimore County*, 232 F.3d 887 (4th Cir. 2000) (table), *cert. denied*, 532 U.S. 957 (2001) (no room for independent judicial assessment of relationship of land-use regulations to their asserted purposes as long as "statements by . . . lawmakers set out legitimate reasons for imposing . . . restrictions on property"). By comparison, it is precisely "the effectiveness . . . of policy" that courts must scrutinize under the Takings Clause, according to the Ninth Circuit.

Likewise, in *Santa Monica Beach, Ltd. v. Superior Ct.*, 968 P.2d 993 (Cal.), *cert. denied*, 526 U.S. 1131 (1999), the California Supreme Court rejected an effort by the plaintiff to use the Takings Clause to engage in a intrusive review of legislative action. It held that the Takings Clause imposed not a "heightened intermediate scrutiny standard," but rather a test that asks only if the challenged regulation is "arbitrary" and whether it advances a "legitimate government interest" — even if that interest has not been identified by the legislature as a stated goal. *See id.* at 1004 (rejecting

application of heightened standard used in *Nollan* and *Dolan* to California rent control statute).[1]

The New York Court of Appeals has similarly refused to apply a heightened standard of review under the Takings Clause. In *Bonnie Briar Syndicate, Inc. v. Mamaroneck*, 721 N.E.2d 971 (N.Y. 1999), *cert. denied*, 529 U.S. 1094 (2000), a plaintiff seeking invalidation of a town land use ordinance argued that the town should be required to demonstrate a "close causal nexus" between the ordinance and the interests it sought to advance. *Id.* at 974-75. The court disagreed, requiring only that the ordinance bear a "reasonable relationship" to a governmental objective. *Id.* at 976 (declining to apply *Nollan*'s "essential nexus" standard outside context of exactions). A stricter standard, the court observed, would impermissibly infringe upon the legislature's prerogative to select the policy it deemed most appropriate: "it is not this Court's place to substitute its own judgment for that of the Zoning Board . . . [T]he question before us . . . is not the general wisdom or desirability of the regulation." *Id.* (internal quotation omitted). *See also Omya, Inc. v. Town of Middlebury*, 758 A.2d 777, 780 (Vt. 2000) (rejecting Takings Clause claim of substantive invalidity on grounds that substantive due process claim had already been rejected).

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1. This portion of the California Supreme Court's holding drew separate, pointed dissents from Justices Baxter, Chin, and Brown. *See id.* at 1026-1029 (Baxter, J., dissenting); *id.* at 1036-1038 (Chin, J., dissenting); *id.* at 1040-1042 (Brown, J., dissenting), all of whom argued for a higher standard akin to the one adopted by the Ninth Circuit.

II. THE OPINION BELOW CONFLICTS WITH THIS COURT'S PRECEDENTS.

A. A Majority of This Court Has Suggested That the Takings Clause Does Not Permit Judicial Review of the Substantive Validity of Generally-Applicable Legislation.

While there is uncertainty as to whether the Takings Clause permits judicial review of the substantive validity of generally-applicable legislation, five Justices of this Court have indicated that it does not. A grant of certiorari is appropriate to clarify this important area of law.

The "means-ends" test applied by the Ninth Circuit — whether a statute "substantially advances" the government's stated interest — was articulated in the context of the Takings Clause in *Agins*. *See also Penn Central Transp. Co. v. New York City,* 438 U.S. 104, 127 (1978). It has been applied in cases challenging permit conditions that required provision of public access to private property. *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987). But the Court has twice indicated that the test does not apply to generally applicable regulations, other types of permit conditions, or the denial of a permit. *Del Monte Dunes*, 526 U.S. at 702-03, 704; *Dolan*, 512 U.S. at 385, 391-393 & n. 8.

More broadly, a majority of the Court's members have indicated that the substantive Due Process Clause, not the Takings Clause, provides the appropriate avenue for such challenges. In *Eastern Enterprises*, four Justices stated that what lies "at the heart of the [Takings] Clause" is "a concern, not with preventing arbitrary or unfair government action,

but with providing *compensation* for legitimate government action that takes, 'private property' to serve the 'public' good." 524 U.S. at 554 (Breyer, J., dissenting). In addition, Justice Kennedy, concurring in the judgment and dissenting in part, wrote that *Agins's* "substantially advances" test "open[s] the door to normative considerations about the wisdom of government decisions . . . [t]his sort of analysis is in uneasy tension with our basic understanding of the Takings Clause, which has not been understood to be a substantive or absolute limit in the Government's power to act." *Id.* at 545 (invalidating challenged statute under Due Process Clause, rather than Takings Clause) (Kennedy, J., concurring in the judgment and dissenting in part).

One year later, in *Del Monte Dunes*, five Justices acknowledged that the Court had never provided "a thorough explanation of the nature or applicability of the requirement that a regulation substantially advance legitimate public interests outside the context of required dedications or exactions," but declined to address the question because it had not been raised below. 526 U.S. at 704. The other four Justices, while declining to reach the question of whether a challenge to a statute's substantive validity is "properly cognizable" under the Takings Clause, as opposed to the Due Process Clause, noted that the *Agins* means-ends test is "closely related to similar issues in substantive due process property claims." *Id.* at 753 (Souter, J., concurring in part and dissenting in part).[2]

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2. Three of these four justices already had indicated in *Eastern Enterprises* that "at the heart of the [Takings] Clause lies a concern, not with preventing arbitrary or unfair government action, but with providing *compensation* for legitimate government action that takes 'private property' to serve the 'public' good." 524 U.S. 498, 554 (Breyer, J. dissenting) (emphasis in original).

The Ninth Circuit's reading of this Court's precedent as justifying broad application of the *Agins* test to economic legislation is untenable. None of the decisions relied upon by the Ninth Circuit transfer review of generally-applicable land-use regulation from the Due Process Clause to the Takings Clause.

B. The Ninth Circuit's Exacting Review of the Rent-Control Statute Involved In This Case Conflicts With the More Deferential Standard Required by this Court.

To the extent this Court has applied a means-ends test in reviewing Takings Clause challenges, it has used an extremely deferential standard, akin to the "rational relationship" test under the substantive component of the Due Process Clause. This Court should grant certiorari to make clear that if any substantive scrutiny is appropriate, it is this standard that applies.

This Court's decision in *Keystone Bituminous Coal Assn. v. DeBenedictis*, 480 U.S. 470 (1987), establishes that the Takings Clause, even if it entails some substantive review of a statute, does not permit heightened scrutiny of the statute's effectiveness. *Keystone* involved a Takings Clause challenge to a Pennsylvania statute that limited coal-mining activity. Although the court split sharply on the ultimate merits, it unanimously adopted a deferential standard of review. The majority upheld the statute because the Act "plainly [sought] to further" the substantial "public interest in preventing activities similar to public nuisances," *id.* at 492; the dissent, though persuaded that there was a compensable taking, noted that "our inquiry into legislative purpose is not intended as a license to judge the effectiveness of legislation,"

id. at 470 n.3. Rather, "'whether *in fact* the provisions will accomplish the objectives is not the question: the [constitutional requirement] is satisfied if . . . the . . . [State] Legislature *rationally could have believed* that the [Act] would promote its objective.'" *Id.* (quoting *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 242 (1984) (quoting in turn *Western and Southern Life Insurance Co. v. State Board of Equalization*, 451 U.S. 648, 671-72 (1981))). None of the Justices suggested that a less deferential standard of review might be appropriate in a Takings Clause challenge to a generally-applicable state statute.

The Ninth Circuit attempted to locate such a requirement in *Del Monte Dunes*, which in fact stands for precisely the opposite proposition. There, the Court rejected the application of the "rough-proportionality" Takings Clause test "beyond the special context of exactions" at issue in *Nollan* and *Dolan*, which the Court had subjected to "intermediate" review. *See Dolan*, 512 U.S. at 390. Such heightened scrutiny, the Court held, was "inapposite" to a challenge "based not on exactions but on denial of development." 526 U.S. at 703. It is presumably even more "inapposite" to generally-applicable regulation of the sort at issue in the present case.

Although the law in this area is uncertain, it certainly will not support the Ninth Circuit's approach. *Keystone* and *Del Monte Dunes* establish that, if any judicial review of a statute's substantive validity is appropriate under the Takings Clause, the standard of review is deferential. This Court should grant certiorari to correct the Ninth Circuit's novel and unwarranted approach to this issue.

III. WHETHER THE TAKINGS CLAUSE PERMITS ANY SUBSTANTIVE REVIEW OF THE REASONABLENESS OF ECONOMIC LEGISLATION, AND IF SO, THE PROPER STANDARD OF REVIEW, IS AN ISSUE OF TREMENDOUS PUBLIC IMPORTANCE.

A great deal is at stake in this case. Amici States, as well as localities across the country, rely on a wide range of economic legislation, including land-use regulations, to protect the health and welfare of their citizens. The Ninth Circuit's decision threatens to complicate, perhaps even paralyze, these routine exercises of the police power.

Certiorari is appropriate here in part because of uncertainty as to whether the Takings Clause permits any analysis at all of the efficacy of generally-applicable economic legislation. As one member of the California Supreme Court noted in *Santa Monica Beach*, this question "remains an open one," and if the Clause authorizes application of a means-ends test, "the high court ought to tell us so, preferably sooner rather than later." *Santa Monica Beach, Ltd.*, 968 P.2d at 1047 (Brown, J., dissenting).

A grant of certiorari is also warranted because whatever the answer to this question, the standard of review used by the Ninth Circuit turns the Takings Clause on its head, and this Court should clarify that it has no application to a claim for just compensation. Even under the substantive component of the Due Process Clause, which plainly does permit limited judicial scrutiny of whether a statute might serve a government interest, review is highly deferential, asking only whether "it might be thought that the particular legislative measure was a rational way to correct [a particular problem],"

Williamson v. Lee Optical of Oklahoma, Inc., 348 U.S. 483, 487-88 (1955); *see Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 461-64, 470, n. 12 (1981). The Ninth Circuit instead imposed far more rigorous scrutiny, conducting a *de novo* and painstaking review of whether, in the court's view, the policy choice made by the Hawaii Legislature was the right one to advance its goals. Use of this standard of review would likely lead to the invalidation of numerous statutes and ordinances, and tie many more up for years in costly litigation. The result for the regulatory process could be disastrous. *See Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, 535 U.S. 302, 335 (2002) (application of categorical rule to Takings Clause challenges alleging delay in property use rejected because it "would undoubtedly require changes in numerous practices that have long been considered permissible exercises of the police power").

The standard used by the Ninth Circuit is even more startling since the court below completely ignored the touchstone of regulatory takings jurisprudence — adverse economic impact. The notion that a regulation might effect a compensable taking evolved in response to concerns that it might "go too far" by imposing a severe economic impact on an individual in order to advance or protect the public good. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922). In the instant case, however, the Ninth Circuit determined that the Hawaii statute effectuated an uncompensated taking even though the affected property owners admittedly suffered *no* constitutionally-significant economic injury. 224 F.3d at 1041.

At the same time, the Ninth Circuit inadvisably enmeshed itself in "predictive" fact finding, 224 F.3d at 1039, an exercise for which it lacks institutional competence. Legislatures are better suited than courts to make predictions about the utility and effectiveness of a particular statute. Recognizing this fact, the Court, unlike the Ninth Circuit, has declined to engage in predictive economic fact finding. *General Motors Corp. v. Tracy*, 519 U.S. 278, 307-09 (1997) ("the Court is institutionally unsuited to gather the facts upon which economic predictions can be made, and professionally untrained to make them").

Moreover, this Court has already rejected the type of intrusive judicial review authorized by the court below. Since the repudiation of *Lochner v. New* York, 198 U.S. 45 (1905), some seventy years ago, it has recognized that state legislatures possess the discretion necessary to craft reasonable solutions to evolving problems. Consistent with this historical understanding, this Court has held that "state legislatures have constitutional authority to experiment with new techniques; they are entitled to their own standard of the public welfare; they may within extremely broad limits control practices in the business-labor field." *Day-Brite Lighting, Inc. v. Missouri*, 342 U.S. 421, 423 (1952). This Court should grant certiorari to confirm that amici States, as well as localities, may continue to do so without being second-guessed by the courts.

For the foregoing reasons, *amici curiae*, the States of New York, California, Colorado, Connecticut, Delaware, Illinois, Iowa, Kentucky, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, Oklahoma, Oregon, Utah, Vermont, Washington, the Commonwealth of Puerto Rico, and the Territories of Guam and the Virgin Islands, respectfully urge this Court to grant the Petition for a Writ of Certiorari.

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